IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

CRL.A.No. 610 of 2001(B)

SC.232/2000 OF SESSIONS COURT, KOTTAYAM.
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APPELLANT/ACCUSED:

SABU, SON OF JOSE, KAINANKUNNEL VEEDU,
KOZHA KARA, KURAVILANGAD, KOTTAYAM.

BY ADV. SRI.V.G.ARUN.

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

ORDER ON CRL.M.P. NO. 3722/2001 IN CRL.A. NO. 610/2001

DISMISSED

07/09/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R.UDAYABHANU, J

Crl.A.No.610 of 2001

Dated this the 7th day of September, 2007

JUDGMENT

The appellant stands convicted for the offences under Sections 323 and 325 of IPC and sentenced to undergo R.I. for three months for the offence under Section 323 IPC and R.I. for one year and to pay fine of Rs.5,000/- for the offence under Section 325 IPC and in default, to undergo simple imprisonment for three months. The sentences are directed to run concurrently.

2. The prosecution case is that on 5.12.1995 at about 8.45 a.m., the defacto complainant was attacked by the accused as the door of the tempo of the accused was closed by the defacto complaint to have sufficient space to park the vehicle of the defacto complainant. It is alleged that the accused got infuriated and attacked the defacto complainant with a granite stone. The defacto complainant sustained fracture of his right ulna.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 10, Exts. P1 to P11. PWs' 4, 5 and 6, the

occurrence witnesses turned hostile. The direct evidence with respect to the incident is confined to the testimony of PW1, the defacto complainant. The medical evidence vide testimony of PWs' 7 and 8 and Exts. P5 and P6 supported the case set up by the prosecution with respect to the injury sustained. The accused was charge sheeted for the offences under Sections 323, 326 of IPC and Section 3(1) and (x) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act 1989. But, the court acquitted the accused for the offence under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act. The evidence disclosed that the injury was sustained when PW3 had tried to block the hit of the accused with the stone on the head and that there was no contact with the stone and the head. It is also the evidence of PW3 that when the other drivers at the spot separated them, (the incident took place at the parking slot) he himself got into the tempo and drove it away and on the way swelling developed and he went to the district hospital.

4. It is contended that there is considerable delay in lodging the FIS. The information reached the police on the same day at 7.00 p.m. The incident was taken place at 8.45 a.m. PW3

has stated that at first he went to the District Hospital, Kottayam, from where he was referred to the Medical College Hospital and after examination at the Medical College hospital he returned home and thereafter went to the police station. In the circumstances, I find that the delay which is not considerable stands explained. There is no merit in the above contention.

5. It is also contended that none of the independent occurrence witnesses has supported the prosecution version. I find that there is no reason to discard the testimony of PW3, the injured as the tact of the injury sustained stands corroborated by the testimony of PWs' 7 and 8 doctors and Exts. P5 and P6 medical records. In the circumstances, I find no reason to deviate from the findings of the court below. The conviction is confirmed.

6. Counsel for the appellant has pleaded for leniency pointing out that the incident is the result of an instantaneous reaction as the accused got infuriated when the defacto complainant another tempo driver closed the door of his tempo without seeking his permission. Both the accused and the defacto complainant are tempo drivers belonging to the same place. In the circumstances, I find that the sentence is to be modified.

Hence, the sentence imposed under Section 325 IPC is modified to imprisonment till the rising of the court and to pay a fine of Rs.25,000/- less the amount if any deposited and in default, to undergo simple imprisonment for six months. The fine amount, if realised, shall be paid to PW3, the defacto complainant. The appellant is granted two months' time to remit the fine amount. He shall appear before the Sessions Judge on 15.11.2007 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl